



March 12, 2021

Mr. Michael Regan, Administrator
U.S. Environmental Protection Agency
Office of the Administrator: mail code 1101A
1200 Pennsylvania Ave, NW
Washington, DC 20460
regan.michael@epa.gov

By Email and Certified Mail

Re: 60-Day Notice of Intent to File Clean Air Act Citizen Suit

Administrator Regan:

This letter is submitted on behalf of the following organizations to notify you pursuant to § 7604(b) of the Clean Air Act that these organizations intend to sue the U.S. Environmental Protection Agency for its failure to perform nondiscretionary duties under the Act:

Downwinders at Risk
1808 South Good Latimer Expy.
#202
Dallas, TX 75226

Texas Environmental Justice
Advocacy Services
900 N. Wayside Drive
Houston, TX 77011

Air Alliance Houston
2520 Caroline St., Ste. 100
Houston, TX 77004

Appalachian Mountain Club
10 City Square
Boston, MA 02129

Sierra Club
2101 Webster St., Ste. 1300
Oakland, CA 94612

Clean Wisconsin
634 W Main St. #300
Madison, WI 53703

Center for Biological Diversity
P.O. Box 710
Tucson, AZ 85702-0710

Environmental Defense Fund
257 Park Avenue South
New York, New York 10010

Earthworks
1612 K St., NW,
Suite 904,
Washington, DC 20006

Natural Resources Defense
Council
40 West 20th St., 11th floor
New York, NY 10011

As further specified below, you have failed to carry out your nondiscretionary duty under § 7410(k)(2) & (3) to approve or disapprove state Good Neighbor plans under the 2015 ozone standard.

BACKGROUND

The Clean Air Act requires EPA to set national ambient air quality standards for certain pollutants that endanger public health or welfare, including ozone. 42 U.S.C. §§ 7408, 7409. EPA must set these standards at a level that protects public health with “an adequate margin of safety.” 42 U.S.C. § 7409(b). The Clean Air Act’s Good Neighbor Provision requires that states “prohibit[] . . . any source . . . from emitting any air pollutant in amounts which will . . . contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national [] ambient air quality standard.” 42 U.S.C. § 7410(a)(2)(D)(i)(I). To implement the standards and satisfy the Good Neighbor Provision, states “shall, after reasonable notice and public hearings, adopt and submit” a Good Neighbor plan to EPA “within 3 years” of promulgation of the standards. 42 U.S.C. § 7410(a).

State implementation plans, including Good Neighbor plans, must meet minimum completeness criteria, established under § 7410(k)(1)(A), and set forth under 40 C.F.R. Part 51, Appendix V. If a state timely submits its plan to EPA, EPA must determine whether the plan meets the minimum criteria and is complete “[w]ithin 60 days of [EPA’s] receipt of [the] plan.” 42 U.S.C. § 7410(k)(1)(B). If a state does not submit its plan to EPA, EPA must make its completeness determination “no later than 6 months after the date, if any, by which [the] State is required to submit the plan.” 42 U.S.C. § 7410(k)(1)(A), (B). If EPA does not find a state plan incomplete within 6 months of submission, the plan “shall on that date be deemed” complete “by operation of law.” 42 U.S.C. § 7410(k)(1)(B).

Once a state Good Neighbor plan is “complete,” EPA “shall” approve, approve in part and disapprove in part, or disapprove of the plan “[w]ithin 12 months,” 42 U.S.C. § 7410(k)(2) & (3), depending on whether it satisfies the Clean Air Act, including the Good Neighbor Provision, 42 U.S.C. § 7410(a)(2)(D)(i)(I).

EPA’S UNMET NONDISCRETIONARY DUTY

EPA is in ongoing violation of its duty to approve or disapprove the following 32 states’ Good Neighbor plans: Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, West Virginia, Wisconsin, and Wyoming.

On October 1, 2015, EPA strengthened the standard for ground-level ozone to 70 parts per billion, 80 Fed. Reg. 65,292, triggering the states' obligation to submit Good Neighbor plans "within 3 years," or by October 1, 2018. *See* 42 U.S.C. § 7410(a). Between August 27, 2018 and November 13, 2019, the 32 above-listed states submitted to EPA Good Neighbor plans under the 2015 ozone standard.¹ By or before dates between February 27, 2019 and November 21, 2019, these 32 states' Good Neighbor plans were deemed "complete," either by EPA or by operation of law, *see* 42 U.S.C. § 7410(k)(1)(B) (deeming states' plans complete "6 months after receipt of the submission").² Thus, EPA was required to approve or disapprove these 32 states' Good Neighbor plans "[w]ithin 12 months," or between February 27, 2020 and November 21, 2020. EPA has not approved or disapproved these 32 states' Good Neighbor plans by the deadline³ and is thus in ongoing violation of its nondiscretionary duty under the Clean Air Act.

The above-listed organizations hereby give notice of their intent to file suit 60 days from the postmark of this letter to compel EPA to promptly approve or disapprove these 32 states' Good Neighbor plans. We would welcome the opportunity to discuss the basis for this notice letter and explore options for resolution of these claims without litigation. If that is of interest to EPA, please contact the undersigned counsel.

¹ *See* EPA, National Status of a 110(a)(2) Ozone (2015) SIP Infrastructure Requirement, https://www3.epa.gov/airquality/urbanair/sipstatus/reports/x110_a_2_ozone_2015_section_110_a_2_d_i_-_i_prong_1_interstate_transport_-_significant_contribution_inbystate.html (Prong 1), and https://www3.epa.gov/airquality/urbanair/sipstatus/reports/x110_a_2_ozone_2015_section_110_a_2_d_i_-_i_prong_2_interstate_transport_-_interfere_with_maintenance_inbystate.html (Prong 2).

² The following 25 states' plans were deemed complete by EPA or by operation of law on the following dates: Texas (Mar. 12, 2019); West Virginia and Wisconsin (Mar. 14, 2019); Arizona (Mar. 24, 2019); New York (Mar. 25, 2019); Kansas (Mar. 27, 2019); Nevada and Ohio (Mar. 28, 2019); California, Minnesota, and Montana (Apr. 1, 2019); Oklahoma (Apr. 25, 2019); Indiana (May 2, 2019); Connecticut (June 6, 2019); Wyoming (July 3, 2019); Kentucky (July 9, 2019); Michigan (Sep. 8, 2019); Maryland (Oct. 24, 2019); Arkansas (Nov. 7, 2019); Mississippi (Nov. 12, 2019); Hawaii (Nov. 13, 2019); New Jersey (Nov. 13, 2019); Louisiana (Nov. 14, 2019); Missouri (Nov. 15, 2019); and Illinois (Nov. 21, 2019). *See Id.* Additionally, the following 7 states' plans were deemed complete no later than the following dates (6 months after submittal): Alabama (Feb. 27, 2019); South Carolina (Mar. 7, 2019); Tennessee (Mar. 17, 2019); Georgia (Mar. 24, 2019); Florida (Mar. 26, 2019); North Carolina (Apr. 10, 2019); and Iowa (May 30, 2019). *See id.*

³ Maine's plan was deemed complete on Aug. 12, 2020, *id.*, and EPA is thus required to approve or disapprove of Maine's plan by Aug. 12, 2021, *see* 42 U.S.C. § 7410(k)(2) & (3). EPA should address all states' Good Neighbor plans together.

/s/ with permission

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Sincerely,



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